

**STATE OF ILLINOIS
HUMAN RIGHTS COMMISSION**

IN THE MATTER OF THE REQUEST)	
FOR REVIEW BY:)	CHARGE NO.: 2009CA3644
)	EEOC NO.: 21BA92036
PEDRO DE LA TORRE)	ALS NO.: 10-0159
)	
Petitioner.)	

ORDER

This matter coming before the Commission by a panel of three, Commissioners Robert S. Enriquez, Greg Simoncini and Marti Baricevic presiding, upon Pedro De La Torre's ("Petitioner") Request for Review ("Request") of the Notice of Dismissal issued by the Department of Human Rights ("Respondent")^[1] of Charge No. 2009CA3644; and the Commission having reviewed all pleadings filed in accordance with 56 Ill. Admin. Code, Ch. XI, Subpt. D, § 5300.400, and the Commission being fully advised upon the premises;

NOW, **THEREFORE**, it is hereby **ORDERED** that the Respondent's dismissal of the Petitioner's charge is **SUSTAINED** on the following ground:

LACK OF SUBSTANTIAL EVIDENCE

In support of which determination the Commission states the following findings of fact and reasons:

1. The Petitioner was employed by Adjustable Clamp Company ("Employer") as an Assistant Foreman on the first shift. On May 5, 2009, the Petitioner filed a charge of discrimination with the Respondent against the Employer. The Petitioner alleged the Employer discharged him in March of 2009 because of his age, 50, in violation of Section 2-102(A) of the Illinois Human Rights Act ("Act"). On February 10, 2010, the Respondent dismissed the Petitioner's charge for Lack of Substantial Evidence. On March 1, 2010, the Petitioner timely filed this Request.
2. In March 2009, the Petitioner was the only Assistant Foreman employed by the Employer.

^[1] In a Request for Review Proceeding, the Illinois Department of Human Rights is the "Respondent." The party to the underlying charge who is requesting review of the Department's action shall be referred to as the "Petitioner."

3. On March 20, 2009, the Employer transferred several workers from the second shift to the first shift in lieu of laying them off. Those employees ranged in age from 37 through 58 years old.
4. On March 23, 2009, the Employer laid off the Petitioner. The Separation Notice sent to the Petitioner by the Employer stated the reason for the lay off was due to lack of work.
5. The Employer also dismissed several other employees from its first shift on March 23rd. These employees ranged in age from 26 through 60 years old.
6. In his charge and in his Request, the Petitioner argues the Employer discharged him because of his age, 50. Also in his Request, the Petitioner contends the Employer replaced him with a younger, less qualified individual, whom the Petitioner identifies by name. The Respondent determined the employee identified by the Petitioner was one of the individuals whom the Employer had transferred to the first shift in lieu of laying him off. The employee was 41 years old and his job title was Lead Man.
7. In its Response, the Respondent asks the Commission to sustain the dismissal of the Petitioner's charge for lack of substantial evidence. The Respondent argues the Petitioner failed to establish a *prima facie* case of employment discrimination because there was no evidence a similarly situated younger Assistant Foreman was treated more favorably than the Petitioner. The Respondent argues that younger employees were also laid off by the Employer at the same time the Petitioner was laid off. Further, the Respondent argues that assuming a *prima facie* case was established, the Employer articulated a non-discriminatory reason for discharging the Petitioner, and the Respondent found no substantial evidence of pretext.

CONCLUSION

The Commission concludes the Respondent properly dismissed the Petitioner's charge for lack of substantial evidence. If no substantial evidence of discrimination exists after the Respondent's investigation of a charge, the charge must be dismissed. See 775 ILCS § 5/7A-102(D). Substantial evidence exists when the evidence is such that a reasonable mind would find the evidence sufficient

to support a conclusion. See In re Request for Review of John L. Schroeder, IHRC, Charge No. 1993CA2747, 1995 WL 793258 (March 7, 1995).

The Commission found no substantial evidence the Employer discharged the Petitioner because of his age. As a result of its investigation, the Respondent determined that employees younger than the Petitioner were laid off by the Employer on the same day the Petitioner was laid off. Further, the Respondent determined the Employer chose not to lay off several employees who were close in age to or older than the Petitioner. As such, there is no substantial evidence the Employer's employment decision was motivated by the Petitioner's age.

Accordingly, it is the Commission's decision that the Petitioner has not presented any evidence to show the Respondent's dismissal of his charge was not in accordance with the Act. The Petitioner's Request is not persuasive.

WHEREFORE, IT IS HEREBY ORDERED THAT:

The dismissal of the Petitioner's charge is hereby **SUSTAINED**.

This is a final Order. A final Order may be appealed to the Appellate Court by filing a petition for review, naming the Illinois Human Rights Commission, the Illinois Department of Human Rights, and Adjustable Clamp Company, as Respondents, with the Clerk of the Appellate Court within 35 days after the date of service of this Order.

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Entered this 18th day of November 2010.

Commissioner Marti Baricevic

Commissioner Robert S. Enriquez

Commissioner Gregory Simoncini